

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 10, 2001

IN RE:

PETITION FOR ARBITRATION OF ITC^DELTACOM
COMMUNICATIONS, INC. WITH BELL SOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO
THE TELECOMMUNICATIONS ACT OF 1996

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DOCKET NO.
99-00430

ORDER APPROVING INTERCONNECTION AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on June 26, 2001 for approval of an Interconnection Agreement negotiated between BellSouth Telecommunications, Inc. ("BellSouth") and ITC^DeltaCom Communications, Inc. ("DeltaCom") pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("Act").

Background

On June 11, 1999, DeltaCom filed a *Petition for Arbitration of ITC^DeltaCom* requesting the Authority arbitrate the interconnection agreement between it and BellSouth. The Petition contained seventy-three (73) issues, including subparts. The Directors accepted DeltaCom's Petition on June 29, 1999, appointed themselves as Arbitrators, and directed General Counsel or his designee to serve as the Pre-Arbitration Officer. BellSouth responded to the petition on July 6, 1999. The Pre-Arbitration Officer held a conference on August 4, 1999 for the purpose of clarifying the issues and setting a procedural schedule. As a result of these events, the parties resolved many issues, leaving the following sixteen (17) issues open for resolution: 1(a), 2, 6(a),

2(a)(iv), 2(b)(ii), 2(b)(iii), 3(1), 3(2), 4(a), 5, 6(b), 6(c), 6(d), 7(b)(iv), 8(b), 8(e) and 8(f). The Authority heard testimony related to these issues at a three-day hearing held from November 1, 1999 until November 3, 1999.

On January 25, 2000, the Arbitrators proposed taking official notice of the arbitration record in Docket No. 99-00377.¹ The Arbitrators gave the parties an opportunity to respond and none objected. Thereafter, the Arbitrators took official notice of the record.

The Arbitrators deliberated at a public meeting on April 4, 2000. The Arbitrators resolved most of the issues, but ordered the parties to submit final best offers on issues 4(a), 5 and 8(e) within thirty (30) days of receipt of the transcript by the Authority and issue 1(a) within forty-five (45) days of receipt of the transcript by the Authority.² DeltaCom filed final best offers as to issues 4(a), 5, and 8(e) on May 4, 2000, amended final best offers as to issues 4(a), 5, and 8(e) on May 12, 2000, and final best offers as to issue 1(a) on May 22, 2000. BellSouth filed final best offers as to issues 4(a), 5, and 8(e) on May 8, 2000, final best offers as to issue 1(a) on May 22, 2000, and a response to DeltaCom's final best offers on July 27, 2000. In addition, BellSouth filed *BellSouth Telecommunications, Inc.'s Motion for Reconsideration* ("Motion for Reconsideration") on May 22, 2000. DeltaCom filed a response to the Motion for Reconsideration on June 8, 2000, and BellSouth filed a reply on July 26, 2000.

The Arbitrators addressed the Motion for Reconsideration and the final best offers immediately following a regularly scheduled Authority Conference on August 1, 2000. The Arbitrators first determined that the Motion for Reconsideration was premature and dismissed the motion without prejudice. The Arbitrators next found that the parties failed to properly respond

¹ *In re: Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00377.

² *See Interim Order of Arbitration Award* (Aug. 11, 2000).

to issue 1(a) and ordered the resubmission of final best offers. Thereafter, the Arbitrators resolved issues 4(a), 5, and 8(e).³

On August 28, 2000, BellSouth filed *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* ("August 28th Motion for Reconsideration"). On September 8, 2000, DeltaCom filed a response to the August 28th Motion for Reconsideration. BellSouth filed a reply memorandum on December 29, 2000, and DeltaCom filed a response to the reply on February 1, 2001.

The Arbitrators addressed issue 1(a) and BellSouth's August 28th Motion for Reconsideration following a regularly scheduled Authority Conference on February 6, 2001. The Arbitrators held BellSouth's August 28th Motion for Reconsideration in abeyance and agreed to permit BellSouth to supplement its August 28th Motion for Reconsideration within fifteen (15) days of the filing of a written order. On February 23, 2001, the Authority issued its written order.⁴

As provided for in the *Final Order of Arbitration*, BellSouth supplemented its August 28th Motion for Reconsideration on March 12, 2001. BellSouth requested that the Arbitrators reconsider and clarify their decisions as to Issue 1(a), 2(b)(ii), 2(b)(iii), 3(d), and 6(d). On March 16, 2001, DeltaCom filed its initial response to the August 28th Motion for Reconsideration as supplemented. In its response, DeltaCom argued that the Arbitrators should deny the August 28th Motion for Reconsideration as supplemented, but, if reconsideration is a possibility, proposed two alternatives. First, DeltaCom suggested that the Arbitrators provide it additional time to file a more detailed response and continue the matter until at least April 3, 2001. Second, DeltaCom

³ See *Second Interim Order of Arbitration Award* (Aug. 31, 2000).

⁴ See *Final Order of Arbitration* (Feb. 23, 2001).

proposed that, if the Arbitrators granted the August 28th Motion for Reconsideration as supplemented and set the matter for further proceedings, the Arbitrators should provide additional time to allow DeltaCom to file a more detailed response.

The Arbitrators first considered the August 28th Motion for Reconsideration as supplemented immediately following a regularly scheduled Authority Conference on March 20, 2001. The Arbitrators voted unanimously to grant the August 28th Motion for Reconsideration as supplemented, but to determine whether to modify the *Final Order of Arbitration* at a later date. The Arbitrators also voted unanimously to allow DeltaCom until April 10, 2001 to file a detailed response and requested that DeltaCom state its position as to whether the Arbitrators should include the affidavit of David C. Coon and Attachments 1, 2, and 3 to the supplement in the evidentiary record.⁵

On April 4, 2001, BellSouth and DeltaCom filed a *Joint Motion for the TRA to Approve the Parties Settlement of Petition Issue 1(a)* (“Joint Motion”). In the Joint Motion, the parties stated that DeltaCom would not be filing anything in opposition to BellSouth’s requested reconsideration of Issue 1(a). On April 20, 2001, BellSouth filed a letter in which it renewed its requests for reconsideration of Issue 1(a) and withdrew its requests for reconsideration of Issues 2(b)(ii), 2(b)(iii), 3(d), and 6(d).

The Arbitrators considered the August 28th Motion for Reconsideration as supplemented and the Joint Motion on May 1, 2001. The Arbitrators found that there was no need for them to specifically approve a settlement and, therefore, denied the Joint Motion. Next, upon hearing no objection from DeltaCom, the Arbitrators unanimously voted to open the evidentiary record for

⁵ See *Order Granting Motion for Reconsideration and Clarification and Setting Date for Filing a Response* (Apr. 25, 2001).

the sole purpose of admitting into the evidentiary record the affidavit of David C. Coon, attached to the Motion for Reconsideration filed on May 22, 2000, and Attachments 1, 2, and 3 to the supplement.⁶ The Arbitrators then turned to the reconsideration and made certain modifications to their ruling on issue 1(a).⁷

On April 25, 2001, BellSouth and DeltaCom filed a *Petition for Approval of the Interconnection Agreement Negotiated Between BellSouth Telecommunications, Inc. and ITC^DeltaCom Communications, Inc. Pursuant to the Telecommunications Act of 1996*. The Interconnection Agreement attached to the Petition contained the following language:

BellSouth and ITC^DeltaCom cannot agree as to a definition of “currently combined.” The Parties have differing interpretations of the Commission’s November 22, 2000 order in Docket No. 97-01262. The Parties agree to sit down 60 days after the Effective Date of this Agreement and negotiate final language on this issue and if not resolved, the Parties shall petition the Commission for resolution. In the interim, ITC^DeltaCom shall submit and BellSouth shall provision combinations pursuant to BellSouth’s definition of “currently combined.”⁸

Thereafter, the Authority directed the parties during the May 15, 2001 Authority Conference and in a *Notice of Filing* issued on May 16, 2001 to either submit agreed or separate proposed language on this subject consistent with the Authority’s ruling in Docket No. 97-01262⁹ no later than May 22, 2001. On May 22, 2001, each party submitted proposed language. In addition, BellSouth attached to its filing new rates for unbundled network element combinations that were different than those the parties included in the April 25th Interconnection Agreement filing.

In response to these submissions, the Authority sent a data request letter to BellSouth on

⁶ See Transcript of Proceedings, May 1, 2000, p. 4-5 (Arbitration Hearing).

⁷ See Order on Reconsideration and Denying Joint Motion (Jun. 26, 2001).

⁸ *Petition for Approval of the Interconnection Agreement Negotiated Between BellSouth Telecommunications, Inc. and ITC^DeltaCom Communications, Inc. Pursuant to the Telecommunications Act of 1996*, Interconnection Agreement, Attachment 2, p.19 (Apr. 25, 2001).

⁹ *In re: Petition of BellSouth Telecommunications Inc. to Convene a Contested Case to Establish “Permanent Prices” for Interconnection and Unbundled Network Elements*, Docket No. 97-01262.

May 25, 2001 regarding the calculation of the new rates. BellSouth filed its response on June 4, 2001, which included a second set of new rates for unbundled network element combinations. On June 6, 2001, the Authority directed DeltaCom to inform the agency of whether it had agreed or would agree to BellSouth's second set of new rates. DeltaCom filed its response on June 7, 2001. DeltaCom recommended that the Authority adopt either the previously approved cost based switch-as-is nonrecurring rates for combinations or those rates proposed by BellSouth in its June 4, 2001 filing. Further, DeltaCom proposed that the rates be interim.

On June 20, 2001, BellSouth and DeltaCom modified the April 25, 2001 Interconnection Agreement by filing a new Attachment 2, containing the definition of "currently combined," and Attachment 11, listing the rates for unbundled network element combinations.¹⁰ In addition, the parties stated that they had reached agreement on all issues in this proceeding.

Findings and Conclusions

Based upon the record in this matter and the standards for review set forth in Sections 251 and 252 of the Act, the Directors voted unanimously to approve the Interconnection Agreement filed on April 25, 2001 as amended on June 20 and 21, 2001 and made the following findings and conclusions:


- 1) The Agreement is in the public interest as it provides consumers with alternative sources of telecommunications services within BellSouth Telecommunications, Inc.'s service area.
- 2) The Agreement is not discriminatory to telecommunications service providers that are not parties thereto.

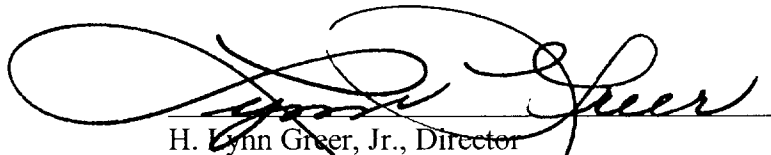
¹⁰ The June 20th filing contained pagination errors. BellSouth and DeltaCom corrected these errors on June 21, 2001 by filing correctly numbered pages.

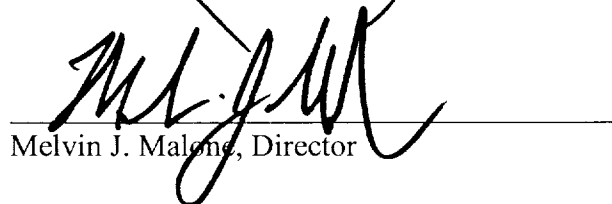
- 3) No party has sought intervention in this docket.
- 4) Approval of the Agreement is consistent with Sections 251 and 252 of the Act.
- 5) The Agreement satisfies the standards for approval of negotiated interconnection agreements set forth in 47 U.S.C. §§ 251 and 252.¹¹
- 6) The Agreement is subject to review by the Authority pursuant to Sections 251 and 252 of the Act and Tenn. Code Ann. § 65-4-104.

IT IS THEREFORE ORDERED THAT:

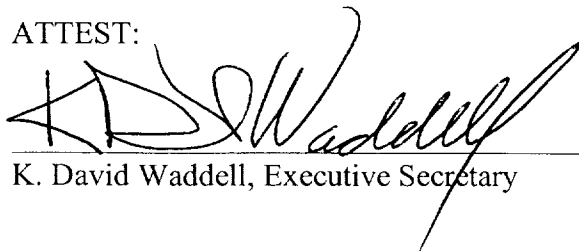
The Interconnection Agreement between BellSouth Telecommunications, Inc. and ITC^DeltaCom Communications, Inc. is approved and is subject to review by the Authority as provided herein.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

¹¹ This Interconnection Agreement is approved as a negotiated agreement signed by both parties and consistent with Sections 251 and 252 of the Act. It does not, however, reflect previous Authority rulings.